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DRAFT #5 – November 7, 2001

Cleaned-up and Reorganized Version of Draft 4 Forcible Administration of Medication Workgroup

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Purpose and Background:

This ad-hoc workgroup was formed to develop a proposal to address issues related to forcible administration of medications to persons who have been adjudicated incompetent and have a court-appointed guardian. Current statutes have resulted in various interpretations over time. One interpretation permitted a treatment provider to hide medication in a person's food or liquids with the guardian's consent, but without a court determination about the person's ability to consent (or refuse consent) to medication or court oversight. Another interpretation prohibited any use of forcible administration of medication unless the person was found to be a danger to self or others under Chapter 51, Statutes, criteria and procedures. The following work product is intended to provide a mechanism to ensure that a person's right to decide if he/she wants to take a medication is not limited unless there is a court determination that the person is not competent to make such a determination. In addition, the work product is intended to provide clarity as to what actions constitute "forcible administration of medication" and adequate procedures to ensure that forcible administration of medication is done only as a last resort. The work product was written in a manner to give drafting instructions for legislative language.

Proposed Standards:

1. Delete s. 880.33 (4m) and develop new sections in ch. 55 and 880 that addresses the following:
 - a. Role and Authority of the Guardian – The guardian may consent to the administration of medication for a non-protesting ward. Consent of administration of medication for a protesting ward must be approved by court order under s. 55.06 (a new paragraph should be written to address this).

- b. Definition of “protesting” – A ward is determined to be protesting receipt of a medication when the ward demonstrates a consistent negative response to presentation of a medication. The negative response does not include protest of the method of administration. For example, a person is not necessarily refusing a medication if the statement is, “I don’t want a shot.” In this example, it is only known that the person objects to the method of administration. On the other hand, if the person says following three consistent attempts to administer Zoloft, “I don’t want that blue pill because it makes me feel funny.” or “That blue pill makes my mouth dry – I don’t want it.” then it is clear that the person is refusing the medication.
 - c. Eliminate the use of the term “forcible administration and replace it with a definition of “involuntary administration of medication.” “Involuntary administration of medication” means either: (1) intentionally placing a medication in a ward’s food knowing that the ward protests receipt of the medication; (2) forcibly holding the ward down to administer a medication; or (3) getting the wards “consent” or cooperation only after threats of retaliation, lost privileges otherwise, etc. This definition does not include medication provided in food or drink with the client’s knowledge and acceptance (i.e., if client consents, or doesn’t object). In other words, the applesauce is only prohibited if done after a client clearly objected to receiving that medication at all, in any way, irrespective of the form of administration.
- 2. The requirements of s. 51.10 (4m) need to be clarified/modified to be workable when there is a guardian.
 - 3. A definition of “dangerousness” should be added to s. 55.06. This standard of dangerousness with similar wording already exists in s. 880.07 (1m) (c), but the requirement for two episodes, one of which occurred during the previous 24 months is too restrictive. The workgroup proposes that 880.07 (1m) (c) be amended to:

That the substantial probability of physical harm, impairment, injury or debilitation is evidenced by either: (1) the person’s history of at least two episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act or omissions that resulted from the person’s failure to participate in treatment, including medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg) or commitment ordered under s. 51.20 (13); or (2) that the subject individual meets one of the dangerousness criteria of s. 51.20 (1) (a) 2. a.-e.

- 4. It is important to state in the newly created statutes the following:

Nothing in this section prohibits the involuntary administration of medication in an emergency [also, permitted in an emergency under s. 51.61 (1) (g) 1.]. A petition must be filed within 48 hours exclusive of weekends and legal holidays, in order to continue to the involuntary administration of medication pending a court decision.

5. The statutes need to have language that state the court determination is a ch. 55 protective placement order for a ward who is under the care of a provider licensed by the department. This would permit the use of the processes in this proposal for persons who are in an institutional setting (i.e., a hospital, nursing facility, HFS 132 licensed only nursing home, intermediate care facility for the mentally retarded, or institution for mental diseases) or a community setting, unless the person is only under the care of a physician (e.g., not under the care of a home health agency, hospice agency, RCAC, AFH, or CBRF).

The statutory language should indicate that a ward who currently is in an institution (hospital or nursing home, which includes nursing facilities, ICFs/MR, IMD-nursing homes) does not, in and of itself, mean that the person is dangerous and requires involuntary administration of medication. In other words, such a person could be found "not dangerous."

If the person is in a residential or institutional setting, then the provider has the authority to involuntarily administer medication. If in the community, then s. 880.33 (4r) would apply.

6. The words "psychotropic" and "in the community" should be removed, as applicable, throughout the subsections of ss. 880.07 (1m), 880.33 (4r) and 55.05 (2) (d). It is the intent of the workgroup that these processes apply to all medications (e.g., a person may pose a significant danger to self if he/she requires injections of insulin and refuses the medication). NOTE: The drafter should do a search of all statutes to determine if there are other places in the statutes where the words "psychotropic" and "in the community" need to be removed.
7. Remove from s. 880.01 (7m) references to "chronic mental illness." The court must make a specific finding that a ward is not competent to refuse medication.

Process Issues:

1. In addition to the requirements of s. 880.33 (1), Stats., the petition must include a written statement signed by a physician that provides:
 - a. General clinical information regarding the appropriate use of the medication for the ward's medical or psychiatric condition (e.g., The labeled use for Tegretol is for treatment of seizure disorders. An unlabeled use of Tegretol is for treatment of mood disorders. There is ample research literature indicating the efficacy of Tegretol for this unlabeled use.); and
 - b. Specific data that indicates the ward's current medical or psychiatric symptoms that necessitate the use of the medication.
2. The guardian ad litem must report to the court whether or not:
 - a. The ward is not competent to refuse medication [refer to s. 51.61 (1) (g) 4. or s. 880.01 (7m)];
 - b. The ward is protesting taking the medication; and
 - c. The administration of the medication is in the best interest of the ward.
3. The petition must allege that unless protective services, including psychotropic medication, are provided the person will incur a substantial probability of physical harm, impairment,

injury or debilitation or will present a substantial probability of physical harm to self or others. The petition also must show either that the risk of harm is an immediate or imminent or show that despite documented attempts at least restrictive interventions to administer the medication to the ward have been tried and shown to be ineffective resulting in a substantial probability of harm.

4. The existing processes under s. 880.33 are adequate (e.g., hearing must be held within 30 days, right to a jury trial, etc.) and can be used for the new statutory section.
5. Other due process – sec. 880.33 (2) (a) 1. already states that adversary counsel is mandatory, right to remain silent, etc. Due process rights for this section should be parallel (i.e., the same as) ch. 55 due process rights including:

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| Same notice; Right to counsel; Appointment of a GAL; Right to a jury trial; Right to cross-examine witnesses; Right to independent medical examination; Right to remain silent; | Hearing moved to where the ward is located; Ward's presence at the hearing presumed; Hearing open unless ward asks for it to be closed; and Right to appeal. |
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These protections should be moved to/listed in the amended sec. 880.07 to increase the chances guardian ad litem, judges and others realize they are required.

Enforcement Issues:

1. County involvement: For each ward who has a court order permitting the involuntary administration of medication, the county department shall provide a copy of the court order to the department.
2. Facility review:
 - a. The facility must submit to the court, the department and the county department a copy of the assessment and the portion of the care plan that addresses the need and rationale for the use of involuntary administration of medication. The assessment must either identify the bona fide, less restrictive measures that were tried and were shown to be ineffective to encourage the ward to take his/her medication or the circumstances that justify bypassing attempts with less restrictive measures. The assessment and care plan must identify the reasons/issues believed to be behind the person's refusal of medication and the interventions that may lead to an increase in the person's willingness to take medication.
 - b. There must be documentation noting each use of involuntary administration of medication.
 - c. Only licensed medical or nursing personnel may administer medication involving involuntary administration that includes holding the ward down.
 - d. The facility must conduct an assessment of the continued need for the involuntary administration of medication, provide the guardian with information necessary for

informed consent (e.g., benefits and risks of the medication and of the involuntary administration of the medication) and obtain informed consent from the guardian at least quarterly.

- e. The attending physician must write an order permitting the involuntary administration of medication. The order must identify the medication(s) that may be forcibly administered and the medication(s) that may not be forcibly administered to the ward. In addition, the order must identify the criteria and the means for involuntary administration of medication (e.g., provide two offers of the medication in 15 minute intervals – if the ward still refuses the medication, place the medication in pudding and offer to the ward).
- f. The facility shall complete the department's prescribed survey regarding the facility's use of involuntary administration of medication.

3. Court review:

- a. The order should make a specific finding that the subject meets the standards/requirements for needing involuntary administration of medication and that the identified medications are necessary for treating the specific conditions outlined in the assessment.
- b. The order is limited to no more than 90 days initially. The order must be reviewed at least annually thereafter (i.e., incorporated into the annual Watts review).
- c. The guardian ad litem must assess the ward's continued need for this order and prepare a report to the court as part of the annual Watt's Review, as required under s. 880.34 (6) (f) 1.

4. Administrative review by the department:

- a. The department shall submit to the legislature an annual report regarding the involuntary use of medication.
- b. During each licensure/certification survey, the department will assess the compliance with these statutory (and subsequent regulations, if any) requirements for each ward who has a court order for the involuntary administration of medication.

5. Petition processes

- a. Who may petition? S. 55.06 (1) (a) to (c) provides provisions for who may petition for protective placement and permits the court to request assistance from the county corporation counsel. For the purpose of petitions involving involuntary administration of medication, the workgroup feels that any of the parties mentioned in s. 55.06 (1) (1) to (c) may initiate the petition, but that the county corporation counsel must be involved in the process (not only upon request of the court), which will help to reduce overuse of these processes.
- b. Who pays for court costs? The workgroup felt that s. 55.06 (1) (a) would serve the purpose: "The department shall provide for a schedule of reimbursement for the cost of such proceedings based upon the ability to pay of the proposed ward or person to be protected."

| Similarities and differences in legal process for involuntary administration of medication | | | |
|--|---|--|--|
| | Chapter 51 – current | Chapter 880 – current (Roberta S. criteria) | Chapter 55 – PROPOSED |
| Standard of dangerousness | Must meet one of the criteria under s. 51.20 (1) (a) 2. a. – e. | Must meet the criterion of dangerousness of s. 880.07 (1m) (c), which is a lower standard of dangerousness than ch. 51, but s. 880.07 (1m) (cm) requires that the person must have two dips into the ch. 51 system of which at least one dip is during the past 24 months. | Must meet the criterion of dangerousness of s. 880.07 (1m) (c), which is a lower level of dangerousness than ch. 51. There is not a requirement for two dips into the ch. 51 system. |
| Consent | Must be found incompetent to consent to medication | Must be found incompetent to consent to medication | Must be found incompetent to consent to medication |
| Possible impact of the medication | Must be treatable. | Must be likely to respond positively to psychotropic medication. | Must be likely to respond positively to the proposed medication. |
| Diagnosis | Mentally ill, developmentally disabled, or substance abuse | Mentally ill | Anyone covered under ch. 55/880 (infirmities of aging, developmental disability, or other like incapacity) |
| Police involvement | Yes | Yes, but per requirements of s. 880.33 (4r) | No. If police involvement is needed, then must go through one of the two other systems. |
| Who administers the medication | A licensed medical or nursing professional | A licensed medical or nursing professional | A licensed medical or nursing professional |
| Who may petition | | | Refer to existing language in s. 55.06 (1) (a) to (c) |
| Who pays for court costs | | | Refer to existing language in s. 55.06 (1) (a), which provides for a sliding scale |
| Evidence required | | Addressed by s. 880.33 (1) – a physician or psychologist must provide a written statement concerning the mental condition of the person and competency to refuse psychotropic medication | Delete the word “psychotropic”, but otherwise use s. 880.33 (1) |

Appendix 1 – Statutory References Used in This Paper

51.10 (4m) (a) An adult who meets the criteria for voluntary admission under sub. (4) and whose admission is approved under sub. (1) or (2) may also be admitted to an inpatient treatment facility if:

1. A physician of the facility submits a signed request and certifies in writing, before not less than 2 witnesses, that the physician has advised the patient in the presence of the witnesses both orally and in writing of the person's rights under sub. (5) and of the benefits and risks of treatment, the patient's right to the least restrictive form of treatment appropriate to the patient's needs and the responsibility of the facility to provide the patient with this treatment; or

2. The person applies for admission in writing.

(b) Any person admitted under par. (a) 1. who fails to indicate a desire to leave the facility but who refuses or is unable to sign an application for admission is presumed to consent to admission and may be held for up to 7 days as a voluntary patient.

(c) On the first court day following admission under par. (a) 1., the facility shall notify the court assigned to exercise probate jurisdiction for the county in which the facility is located of the admission. Within 24 hours after receiving this notice, excluding Saturdays, Sundays and holidays, the court shall appoint a guardian ad litem to visit the facility and to determine if there has been compliance with this subsection. The guardian ad litem shall visit the patient within 48 hours, excluding Saturdays, Sundays and holidays, to ascertain whether the patient wishes a less restrictive form of treatment and, if so, shall assist the patient in obtaining the proper assistance from the facility. The guardian ad litem shall inform the patient of all rights to which the patient is entitled under this chapter.

(d) If a patient admitted under par. (a) 1. has not signed a voluntary admission application within 7 days after admission, the patient, the guardian ad litem and the physician who signed the admission request shall appear before the judge or court commissioner of the court assigned to exercise probate jurisdiction for the county in which the facility is located to determine whether the patient shall remain in the facility as a voluntary patient. If the judge or court commissioner determines that the patient desires to leave the facility, the facility shall discharge the patient. If the facility has reason to believe the patient is eligible for commitment under s. 51.20, the facility may initiate procedures for involuntary commitment.

51.61 (1) (g) Have the following rights, under the following procedures, to refuse medication and treatment:

1. Have the right to refuse all medication and treatment except as ordered by the court under subd. 2., or in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others. Medication and treatment during this period may be refused on religious grounds only as provided in par. (h).

2. At or after the hearing to determine probable cause for commitment but prior to the final commitment order, other than for a subject individual who is alleged to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall, upon the motion of any interested person, and may, upon its own motion, hold a hearing to determine whether there is probable cause to believe that the individual is not competent to refuse medication or treatment and whether the

medication or treatment will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. If the court determines that there is probable cause to believe the allegations under this subdivision, the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. The order shall apply to the period between the date of the issuance of the order and the date of the final order under s. 51.20 (13), unless the court dismisses the petition for commitment or specifies a shorter period. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial.

NOTE: Subd. 2. is repealed and recreated eff. 12-1-01 by 1995 Wis. Act 292 to read:

2. At or after the hearing to determine probable cause for commitment but prior to the final commitment order, the court shall, upon the motion of any interested person, and may, upon its own motion, hold a hearing to determine whether there is probable cause to believe that the individual is not competent to refuse medication or treatment and whether the medication or treatment will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. If the court determines that there is probable cause to believe the allegations under this subdivision, the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. The order shall apply to the period between the date of the issuance of the order and the date of the final order under s. 51.20 (13), unless the court dismisses the petition for commitment or specifies a shorter period. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial.

3. Following a final commitment order, other than for a subject individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., have the right to exercise informed consent with regard to all medication and treatment unless the committing court or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20 (4), makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s. 51.20 (4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.

NOTE: Subd. 3. is repealed and recreated eff. 12-1-01 by 1995 Wis. Act 292 to read:

3. Following a final commitment order, have the right to exercise informed consent with regard to all medication and treatment unless the committing court or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20 (4), makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and notice of motion and shall

include a statement signed by a licensed physician that asserts that the subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s. 51.20 (4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.

3m. Following a final commitment order for a subject individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. This subdivision does not apply after November 30, 2001.

4. For purposes of a determination under subd. 2. or 3., an individual is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:

a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(h) Have a right to be free from unnecessary or excessive medication at any time. No medication may be administered to a patient except at the written order of a physician. The attending physician is responsible for all medication which is administered to a patient. A record of the medication which is administered to each patient shall be kept in his or her medical records. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with a patient's treatment program. Except when medication or medical treatment has been ordered by the court under par. (g) or is necessary to prevent serious physical harm to others as evidenced by a recent overt act, attempt or threat to do such harm, a patient may refuse medications and medical treatment if the patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment. The individual shall be informed of this right prior to administration of medications or treatment whenever the patient's condition so permits.

55.05 (2) CONDITIONS REQUIRED. The department or an agency providing protective services under s. 55.04 may provide such services under any of the following conditions:

(a) The person who needs or believes he or she needs protective service may seek such service.

(b) Any interested person may request protective services on behalf of a person in need of services. A guardian may request and consent to protective services on behalf of the guardian's ward.

(c) The department may provide protective services on behalf of any person in need of such services.

(d) The court may order protective services for an individual for whom a determination of incompetency is made under s. 880.33 if the individual entitled to the protective services will otherwise incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others. The court may order psychotropic medication as a protective service under this paragraph only if a determination of incompetency is made for the individual under s. 880.33 (4m). The court may authorize a guardian to consent to forcible administration of psychotropic medication for an individual only if the court has made a finding under s. 880.33 (4r) (b) that the individual has substantially failed to comply with the administration of psychotropic medication under the individual's treatment plan.

55.06 Protective placement. (1)

(a) The board designated under s. 55.02 or an agency designated by it may petition for appointment of a guardian and for protective services or placement. The department shall provide for a schedule of reimbursement for the cost of such proceedings based upon the ability to pay of the proposed ward or person to be protected.

(b) If a person seeking to be the guardian of a proposed ward requests the assistance of a board designated under s. 55.02 or an agency designated by it in petitioning for guardianship or for protective service or placement, such assistance may be considered a service and may be charged for based upon the ability of such person to pay for the service.

(c) If requested by the court, the corporation counsel shall assist in conducting proceedings under this chapter.

880.01 (7m) "Not competent to refuse psychotropic medication" means that, because of chronic mental illness, as defined in s. 51.01 (3g), and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:

(a) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

(b) The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her chronic mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

880.07 (1m) If the petition under sub. (1) alleges that the person is not competent to refuse psychotropic medication, the petition shall allege all of the following:

(a) That the person is likely to respond positively to psychotropic medication.

(b) That as a result of the person's failure to take medication the person is unable to provide for his or her care in the community. The person's past history is relevant to determining his or her current inability to provide for his or her care in the community under this paragraph.

(c) That unless protective services, including psychotropic medication, are provided the person will incur a substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others.

(cm) That the substantial probability of physical harm, impairment, injury or debilitation is evidenced by the person's history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act or omissions that resulted from the person's failure to participate in treatment, including psychotropic medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg) or commitment ordered under s. 51.20 (13).

(d) That the person has attained the age of 18 years.

880.33 Incompetency; appointment of guardian.

(1) Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition of the proposed ward, based upon examination. The privilege under s. 905.04 shall not apply to this statement. A copy of the statement shall be provided to the proposed ward, guardian ad litem and attorney. Prior to the examination, under this subsection, of a person alleged to be not competent to refuse psychotropic medication under s. 880.07 (1m), the person shall be informed that his or her statements may be used as a basis for a finding of incompetency and an order for protective services, including psychotropic medication. The person shall also be informed that he or she has a right to remain silent and that the examiner is required to report to the court even if the person remains silent. The issuance of such a warning to the person prior to each examination establishes a presumption that the person understands that he or she need not speak to the examiner.

880.33 (4m) (a) If the court finds by clear and convincing evidence that the person is not competent to refuse psychotropic medication and the allegations under s. 880.07 (1m) are proven, the court shall appoint a guardian to consent to or refuse psychotropic medication on behalf of the person as provided in the court order under par. (b).

(b) In any case where the court finds that the person is not competent to refuse psychotropic medication under s. 880.07 (1m) and appoints a guardian to consent to or refuse psychotropic medication on behalf of the person, the court shall do all of the following:

1. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to develop or furnish, to provide to the ward, and to submit to the court, a treatment plan specifying the protective services, including psychotropic medication as ordered by the treating physician, that the proposed ward should receive.

2. Review the plan submitted by the county department under subd. 1., and approve, disapprove or modify the plan.

2m. If the court modifies the treatment plan under subd. 2., the court shall order the appropriate county department under s. 46.23, 51.42 or 51.437 to provide the modified treatment plan to the ward.

3. Order protective services under ch. 55.

4. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to ensure that protective services, including psychotropic medication, are provided under ch. 55, in accordance with the approved treatment plan.

880.33 (4r) If a person substantially fails to comply with the administration of psychotropic medication, if any, ordered under the approved treatment plan under sub. (4m), a court may authorize the person's guardian to consent to forcible administration of psychotropic medication to the person, if all of the following occur before the administration:

(a) The corporation counsel of the county or the person's guardian files with the court a joint statement by the guardian and the director or the designee of the director of the treatment facility that is serving the person or a designated staff member of the appropriate county department under s. 46.23, 51.42 or 51.437, stating that the person has substantially failed to comply. The statement shall be sworn to be true and may be based on the information and beliefs of the individuals filing the statement.

(b) Upon receipt of the joint statement of noncompliance, if the court finds by clear and convincing evidence that the person has substantially failed to comply with the administration of psychotropic medication under the treatment plan, the court may do all of the following:

1. Authorize the person's guardian to consent to forcible administration by the treatment facility to the person, on an outpatient basis, of psychotropic medication ordered under the treatment plan.

2. If the guardian consents to forcible administration of psychotropic medication as specified in subd. 1., authorize the sheriff or other law enforcement agency, in the county in which the person is found or in which it is believed that the person may be present, to take charge of and transport the person, for outpatient treatment, to an appropriate treatment facility.

(c) If the court authorizes a sheriff or other law enforcement agency to take charge of and transport the person as specified in par. (b) 2., a staff member of the appropriate county department under s. 46.23, 51.42 or 51.437 or of the treatment facility shall, if feasible, accompany the sheriff or other law enforcement agency officer and shall attempt to convince the person to comply voluntarily with the administration of psychotropic medication under the treatment plan.

880.34 (6) (f) The court shall do one of the following after holding a hearing under this subsection or, if no hearing is held, after reviewing the guardian ad litem's report and other information filed with the court:

1. Order continuation of the guardianship under s. 880.33 (4m) (a) and protective services order, without modification. The standard for continuation of protective services, including psychotropic medication, is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm).

2. Order continuation of the guardianship under s. 880.33 (4m) (a), with modification of the protective services order.
3. Terminate the guardianship under s. 880.33 (4m) (a) and protective services order.

November 28, 2001

TO: Barb Hughes and Jim Jaeger
FROM: Betsy A.
RE: Special Guardianship Issues

In addition to the other issues I've been BUGGING YOU ABOUT, emanating from the work group on Adult Protective Services Modernization that I've been staffing, I also organized a little one-time meeting with a bunch of advocates for kids with disabilities, concerned about issues of "transition" – i.e., issues related to an older teen with a disability who will soon be turning 18. In addition to a bunch of issues they identified related to the school's role with each of the kids, they also suggested these ideas that would require amendment to the guardianship statute. Do you have any reaction to them?

1. Amend the guardianship statute to allow courts to have jurisdiction six months before a child with a disability turns 18.

This would enable families to plan ahead, and have the guardianship in place when the child turned 18 – i.e., they could hold the hearing somewhat earlier, with the guardianship to become effective on the 18th birthday. I just learned that West Virginia is at least one state that permits early petitions (they allow them 60 days before the individual turns 60).

2. Amend the guardianship statute to require that guardians ad litem review IEPs as part of their duties in guardianships of kids transitioning from schools.

The IEPs are "individualized educational plans" that schools apparently must prepare for kids with disabilities. Requiring the GAL to review these for these older teens leaving schools would help give the GAL a better handle on the individual's abilities and disabilities and make more informed recommendations.

3. Consider changing guardianship statute to require that before a court can order guardianship of an individual transitioning from the schools, etc., there must be a special evaluation that meets certain standards and/or be done by a person with certain credentials or training.

This would, again, help better ensure that a specialized evaluation for these unique circumstances (kind of like a special "comprehensive eval" for a guardianship). Roy had mentioned the Ontario Canada model and has shared "Guidelines for Conducting Assessments of Capacity" prepared by the Office of the Guardian and Trustee, Ontario Ministry of the Attorney General, June 7, 1996.

4. Amend the guardianship statute to provide an expedited/simplified procedure to *reinstate/transfer BACK* certain rights of wards if the ward demonstrates the he or she can provide informed consent for specified treatment decisions.

In our proposal, we had set up an expedited/simplified procedure to transfer MORE (i.e., take away more) rights, in the hopes that courts would be more likely to order limited guardianships if they didn't think it would be so time-consuming, cumbersome, etc., to later transfer more rights if the ward's situation deteriorated. In these cases, of kids transitioning to adulthood, we want the opposite: a simplified system so that as these kids mature, and hopefully benefit from life skills training, etc., that a judge would reinstate (i.e., transfer BACK) some of the rights.

Kennedy, Debora

From: Betsy Abramson [abramson@mailbag.com]
Sent: Friday, January 25, 2002 10:15 AM
To: Kennedy, Debora; aflynn@execpc.com
Subject: Re: Guardianship bill



Becker letter post
LRB meeting...

Good Morning Guardianship Ladies!

Well, here's the deal - and Ann, this will explain Jim's e-mail as well.
I

went to the Elder Law Section meeting yesterday (Jenny Boese was there too)

and told them what we were up to, that I had hired Ann, what she is doing

for the project, etc. I went through the attached memo I had sent to Barbara Becker, pointing out that, while it had been three years and I know

everyone was eager to see a draft, other folks had and will continue to want

input into this and we need a system (i.e., a small "steering committee") of

folks who will make decisions as we go along. I also pointed out (see my

memo questions 3 and 4) that there were some issues that had already come up

and were ready to be "larded" IF they agree. As to #3, the answer is YES,

the long piece that summarizes the areas of agreement from Jim and Barb as

to my work group are accepted and ready to be larded. As to #4, the "transition," issues, they were fine with #1, but not yet there with us on

#2 and #3 (that's YES about giving the courts jurisdiction six months before

a child with a disability turns 18, but NOT (yet?) ok with the making the

GAL look at the individualized education plan OR the special evaluation deal. Hmmm.

Back to my memo, points 5 and 6, they agree that those are important issues

they had not looked at and that I should put together my groups, see what we

come up with, and if we figure it out before you and Debora are done, then

let's lard away.

So, the "Steering Committee" from the Elder Law Section, to ask questions

of, get responses, make decisions, etc., is JIM JAEGER 244-1354, jjaeger@mailbag.com, BARB HUGHES, 244-1354, bhughes@mailbag.com and ME - and

that includes Ann as authorized by me. So, yes, Ann, we need to keep them

all in the loop (and Jenny Boese! - 257-3838, jboese@wisbar.org) but Barb,

Jim and I are the substantive people.

I am impressed that Jim finally gave us the draft on disk - we had been

asking for that for months and apparently the conversation yesterday afternoon gave him the oomph to do it! If you have other questions about where we're at, call or e-mail. I'm here until early/mid afternoon today.

Have a grand weekend all! Bets

----- Original Message -----

From: "Kennedy, Debora" <Debora.Kennedy@legis.state.wi.us>

To: <aflynn@execpc.com>

Cc: <abramson@mailbag.com>

Sent: Friday, January 25, 2002 9:41 AM

Subject: Guardianship bill

> Thanks very much for your fax. The introduction will, I think, be helpful.
> YOUR work is invaluable--what you have done is fine; actually, noting the
> statutory numbers as reference is precisely what I need--the bill will
> consist of a great deal of renumbering, amending, and repeal and
> recreating--the reason that the proposed material has been hard to penetrate
> is that it constantly jumps around among current law.
> In faxing, sometimes the left margin gets cut a bit, but so far I've been
> able to read everything.
>
> Debora A. Kennedy
> Managing Attorney
> Legislative Reference Bureau
> (608) 266-0137
> debora.kennedy@legis.state.wi.us
>

Problems with the proposed revision; needs and recommendations

Problems

1. The proposed revision creates six subchapters with no reference to subchs. II to V in current law. What is the intent? To renumber current subchapters? Is that necessary and appropriate?
2. The proposed revision does not, in most cases, differentiate between current law and newly created or amended provisions; it also does not include a statement of what the committee was attempting to do. Therefore, when one encounters inconsistencies or provisions that conflict, it is difficult to know whether they are oversights in typing out the provisions or whether they are intentional but need to be reconciled. Two examples:
 - a. The proposed revision eliminates from the provision that appears to correspond to s. 880.03, stats., mention of a spendthrift as a person subject to guardianship. However, the definition of "guardianship" proposed includes mention of a spendthrift; if the language proposed for the definition of "incompetent" is intended to encompass spendthrifts, the definition of "guardian" must reflect that by an amendment that eliminates the term "spendthrift". However, if "spendthrift" is eliminated as a concept, shouldn't s. 880.76, stats., be amended or partially repealed?
 - b. The proposed revision, unlike current law, does not mention the specialized situations involving guardianship powers over an individual who refuses psychotropic medications (see s. 880.07 (2m) (c) and (cm), stats.). Is it intended that these paragraphs be repealed? If so, how should s. 51.20 (7) (d), stats., be addressed?
3. We do not draft declarations of policy except in instances in which a proposed statute is clearly constitutionally vulnerable.
4. It is unnecessary throughout to refer to a term "as defined in s. _____," if the term is defined in s. 880.01 (which applies to the entire chapter).

Needs and recommendations

There are two extremely helpful things you could do for a drafter with regard to the proposed revision. First, mark each provision as one of the following (see the example):

1. Current law without change (CL).
2. Current law without change, as renumbered (RN).
3. Current law, as amended (AM).
4. Current law, as renumbered and amended (RA).
5. Current law, as repealed and recreated (RC).
6. Newly created provision (CR).

Secondly, if a provision is current law (whether unchanged, renumbered, amended, renumbered and amended, or repealed and recreated), include its current statutory number.

A third very helpful thing (but one that you may lack the time to do) would be a summary, as specific as possible, of what the committee was trying to do.

Some principles to bear in mind

1. We do not repeal a specific current law provision and create a new provision with the same number during the same biennial session; it makes the Revisor crazy.
2. Renumbering is costly, confusing, and prone to error; therefore, instead of renumbering many provision, we "squeeze" them into current law. As an example, instead of renumbering the definitions s. 880.01 (1), (2), (3), etc., we would fit the definitions of "Activities of daily living" and "Conservator" (which are newly created in the proposed revision) between the current definitions in s. 880.01 (1) ("Agency") and s. 880.01 (2) ("Developmentally disabled person") as s. 880.01 (1g) and (1m).
3. The ordering of statutory units in Wisconsin is: chapter (e.g., ch. 880), subchapter (e.g., subch. I), section (e.g., 880.01), subsection (e.g., 880.01 (1), paragraph (e.g., 880.01 (1) (a)), subdivision (e.g., 880.01 (1) (a) 1.), and subdivision unit (e.g., 880.01 (1) (a) 1. a.). A provision that introduces other provisions is termed a section (or subsection, paragraph, etc.) "intro." (e.g., s. 880.01 (1) (intro.)). Statutory sections continue in numbering throughout a chapter; regardless of whether there are subchapters or not; hence, a subchapter, unless it is the first subchapter, does not contain sections that begin with ".01".

Ann J. Flynn
1109 Seminole Highway
Madison, WI 53711
TEL: 608-233-2083
FAX: 608-233-6404

E-mail: ajflynn@except.com

facsimile transmittal

To: Debora Kennedy

Fax: 264-8522

From: Ann J. Flynn

Date: January 31, 2002

Re:

Pages:

24 including
cover sheet

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Notes:

Debora: Here's some more. I'm a little over halfway there. I'm resending the first pages because I wrote in some extra stuff there if you can use it.

Best wishes, Ann

CONFIDENTIAL

Proposed Guardianship Statute Revision

October 26, 1998 Rev.

Subchapter 1—General Provisions

CHAPTER 54
SUBCHAPTER I
DEFINITIONS

X

Section One. Declaration of Policy

Section Two. Definitions. For the purpose of this chapter, unless the context otherwise requires:

(1) "Agency" means any public ~~or~~ private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437.

(2) "Activities of Daily Living" means activities relating to the performance of self care, work and leisure or play activities, including dressing, feeding or eating, grooming, mobility and object manipulation.

(3) "Conservator" means a person appointed or qualified by a court at an individual's request pursuant to s. _____ to manage the estate of the individual.

(4) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual.

(5) "Guardian" means a person who is eighteen years of age or older, a corporation or a public agency, including a local department of social services, or any other person or legal entity appointed by a court to act on behalf of a minor or an incompetent to provide for personal needs, or manage the estate of a minor, an incompetent or a spendthrift.

(6) "Incompetent" means a person adjudged by a court of record to be unable to meet the essential requirements for the person's physical health or safety or to be unable to adequately manage his or her property or financial affairs so as to meet the essential requirements for his or her physical health or safety.

(a) due to his or her inability to receive and evaluate information effectively or to communicate decisions, and

(b) for reasons including, but not limited to, mental deficiency, physical illness or

CR 54.01 (5) "Incapacity" means ...

RA 850.01(5)

54.01
(intro.)

54.01(2)

54.01(1)

54.01(3)

54.01(7)

54.01(4)

54.01(6)

(intro.)

54.01(6)

(a)

54.01(6)

(b)

54.01(7)

disability, chronic mental illness, chronic use of drugs or controlled substances or chronic alcohol abuse.

(7) "Meeting the essential requirements for physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur. Mere old age, eccentricity, poor judgment or physical disability, either singly or together, without mental impairment, shall not be used to establish incompetence.

(8) "Minor" means a person who has not attained the age of 18 years.

(9) "Interested person" means

(a) for purposes of the petition for guardianship or protective placement:

1. The proposed ward, if he or she has attained 14 years of age.
2. The spouse, and adult children of the proposed ward, and the parents of a minor proposed ward.
3. If the proposed ward does not have a spouse, parent or adult child, the heirs at law of the proposed ward.
4. Any person who has been nominated as fiduciary or appointed to act as fiduciary for the proposed ward by a court of any state, any trustee for a trust established by or for the proposed ward, and any person appointed an agent or attorney in fact under a power of attorney for health care or financial power of attorney.
5. If the proposed ward is a minor, the person who has exercised principal responsibility for the care and custody of the proposed ward during the 60-day period before the filing of the petition.
6. If the proposed ward is a minor and has no living parents, any person nominated to act as fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.
7. If the proposed ward is receiving monies paid or payable by the United States or State of Wisconsin, through their respective Departments of Veterans' Affairs, a representative of the United States or State of Wisconsin Department of Veterans' Affairs.
8. If the proposed ward is receiving medical assistance, community options program or similar benefits, the county department of human or social services.
9. Corporation Counsel of the County of the proposed ward's residence if the petition is not being filed in the county of residence.
10. Any other person that the court requires.

(b) for purposes of proceedings subsequent to the petition for guardianship or

protective placement:

1. The guardian.
2. The spouse, and adult children of the ward, and the parents of a minor ward.
3. Such other persons as the court may require, including any fiduciary that the court may designate.

(c) The court may specifically waive notice to any person named above.

(10) "Standby guardian" means any person designated by the court under s. ___ whose appointment as guardian shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian, or when the initially appointed guardian is unable or unavailable to fulfill his or her duties.

(11) "Ward" means a person for whom a guardian has been appointed.

Subchapter 2—Standard for Appointment of Guardian

Section One. General Provisions

(1) The court may appoint a guardian for a proposed ward if the court determines any of the following:

- (a) That the person is a minor as defined in sub. ___.
- (b) That the person is incompetent as defined in sub. (2)., and:

1. That the appointment is necessary to provide for the personal needs of that person, including food, clothing, shelter, health care or safety and/or to manage the property and financial affairs of that person.

2. In deciding whether the appointment is necessary, the court shall consider the report of the guardian ad litem, as required in sec. ___, and the sufficiency and reliability of available resources, as defined in sub. ___, to provide for personal needs or property management without the appointment of a guardian. Any guardian appointed under this article shall be granted only those powers which are necessary to provide for personal needs and/or property management of the proposed ward in such a manner as appropriate to the individual and which shall constitute the least restrictive form of intervention, as defined in sub. ___.

(2) The determination of incompetence shall be based on clear and convincing evidence and

shall consist of a determination that a person is likely to suffer harm because:

(a) The person is unable to provide for personal needs and/or property management. 54.10(3)(a)1.

(b) The person cannot adequately understand and appreciate the nature and consequences of such inability. 54.10(3)(a)2.

(c) Mere old age, eccentricity, poor judgment or physical disability, either singly or together, without (a) or (b) above, shall not alone be used to establish incompetence. 54.10(3)(a) (intro.)

(3) In reaching its determination of incompetence, the court shall give primary consideration to the functional level and functional limitations of the person. Such consideration shall include an assessment of that person's: 54.10(3)(b) (intro.)

(a) Management of the activities of daily living, as defined in sub. _____. 54.10(3)(b)1.

(b) Understanding and appreciation of the nature and consequences of any inability to manage the activities of daily living. 54.10(3)(b)2.

(c) Preferences, wishes, and values with regard to managing the activities of daily living. 54.10(3)(b)3.

(d) The nature and extent of the person's property and financial affairs and his or her ability to manage them. 54.10(3)(b)4.

It shall also include an assessment of (i) the extent of the demands placed on the person by that person's personal needs and by the nature and extent of that person's property and financial affairs; (ii) any physical illness and the prognosis of such illness; (iii) any mental disability, as that term is defined in sec. ____, alcoholism or substance dependence as those terms are defined in sec., and the prognosis of such disability, alcoholism or substance dependence; and (iv) any medications with which the person is being treated and their effect on the person's behavior, cognition and judgment. 54.10(3)(b) 5, 6, 7, 8.

(4) In addition, the court shall consider all other relevant facts and circumstances regarding the person's: 54.10(3)(c) (intro.)

(a) Functional level. 54.10(3)(c)1.

(b) Understanding and appreciation of the nature and consequences of his or her functional limitations. 54.10(3)(c)2.

(5) Separate guardians of the person and of the estate may be appointed 54.10(i) (intro.)

RA; 880.04 (title)

54.12 (title) -

54.12(1)

Section 2. Exceptions to Normal Guardianship RulesM
80.04

RA

80.04(1)

(1) **EMANCIPATION OF MARRIED MINORS.** Except for minors found to be incompetent, upon marriage, a minor shall no longer be a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward. Upon application, the court may, in its discretion, release in whole or in part the estate of a minor ward to the ward upon the ward's marriage. Upon marriage, the guardianship of an incompetent is subject to review under s. _____

M

80.04(2)

(2) **SMALL ESTATES.** If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$10,000 or less, any court wherein an action or proceeding involving said property is pending may, in its discretion, appoint a guardian of the estate subject to such conditions as the court may require, or, without requiring the appointment of a guardian, order one of the following:

54.12(2)

(intro.)

M

80.04(2)(a)

(a) Deposit in a savings account in a bank or other financial institution, the payment of whose accounts in cash immediately upon default are insured by an agency of the federal government; or invest in interest-bearing obligations of the United States. The fee for the clerk's services in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

54.12(2)

(a)

AM

80.04(2)(b)

(b) Payment to the natural guardian of the minor (as defined in sub. _____) or to the person having actual custody of the minor.

54.12

(2)(b)

CE

AM

(c) Payment to the minor.

54.12(2)(c)

CE

AM

(d) Payment to the person having actual or legal custody of the incompetent or to the person providing for the incompetent's care and maintenance for the benefit of the incompetent.

54.12(2)(d)

CR

(e) Payment to an agent under a durable power of attorney for the ward.

54.12(2)(e)

AM

80.04

(2m)

(3) **INFORMAL ADMINISTRATION.** If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$10,000 or less from an estate administered through informal administration under ch. 865, the personal representative may, without the appointment of a guardian, do any of the following:

54.12(3)

(intro.)

CE

AM

(a) With the approval of the register in probate, take one of the actions under sub. (2).

54.12(3)(a)

CE

AM

(b) With the approval of the guardian ad litem of the minor or incompetent, take one of the actions under sub. (2) and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21.

54.12(3)(b)

Sent 1/24/02

AM (880.04(3))

RA

(4) **UNIFORM GIFTS AND TRANSFERS TO MINORS.** If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court wherein an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment to a custodian for the minor designated by the court or under the uniform gifts to minors act or uniform transfers to minors act of any state subject to any limitations the court may impose.

54.12(4)

SUBCHAPTER III

NOMINATION OF GUARDIAN;
POWERS AND DUTIES;
EXEMPTIONS

Subchapter 3—Guardians of the Person and Estate

Section One. Who May be a Guardian.

RA

AM (880.09)

(1) **NOMINATION OF GUARDIANS.** The court shall consider the following nominations and preferences if they exist, in determining who should be appointed as guardian:

54.15 (intro.)

CR

(a) **AGENT UNDER WARD'S DURABLE POWER OF ATTORNEY.** Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

54.15 (1)

RA

AM

only the opening title the rest is CL (880.09(7))

(b) **PERSON NOMINATED BY THE WARD.** Any person other than a minor may, at such time as the person has sufficient capacity to form an intelligent preference, execute a written instrument, in the same manner as the execution of a will under a. 853.03, nominating a person to be appointed as guardian of his or her person or property or both in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

54.15 (2)

RA

AM

(880.09 (2))

(c) **PARENTS OF A WARD.** If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate or other guardian described in subsection (2) only if no suitable individual guardian is available.

54.15 (3)

See 54.15 (5)

RA

AM

880.09 (16)
RP
880.09 (4), (5)

(d) **TESTAMENTARY NOMINATION BY WARD'S PARENTS.** Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of any of his or her minor children who are in need of guardianship. For a person over the age of 18 found to be in need of guardianship by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian. The parent may waive the requirement of bond as to such estate derived through the will.

54.15 (4)

CR (e) **NOMINATIONS BY INTERESTED PERSONS. PREFERENCE OF INDIVIDUALS OVER CORPORATIONS/AGENCIES.** The court shall appoint a corporate or other guardian described in subsection (2) only if no suitable individual guardian is available. *↑ These seem to say the same thing, except for the*

CR (f) **PREFERENCE OF INDIVIDUALS OVER CORPORATIONS/AGENCIES.** The court shall appoint a corporate or other guardian described in subsection (2) only if no suitable individual guardian is available. *statement in (e) about nominations by interested persons*

AM (2) **PRIVATE NONPROFIT CORPORATIONS OR OTHER ENTITIES.** A private nonprofit corporation organized under ch. 181, 187 or 188 or any other non profit or for profit entity approved by the court is qualified to act as guardian of the person or of the estate or both, of an individual found to be in need of guardianship *under* if the department of health and family services, under rules established under ch. 55, finds the entity a suitable agency to perform such duties. *54.15 (5)*

(3) OTHER CRITERIA FOR GUARDIAN SELECTION.

CR (a) The proposed guardian must submit a sworn and notarized statement to the court at least 96 hours before the hearing, stating that the guardian has not been convicted of a crime as defined in sub ____, filed for or received protection under the bankruptcy laws or has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation. *no suitable individual is available as guardian, 54.15 (9)*

CR (b) If the proposed guardian has been convicted of a crime, filed for or received protection under the bankruptcy laws or has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation, then the statement must contain a description of the circumstances surrounding those events.

CR (c) If, at the hearing, the court finds that the proposed guardian is inappropriate, the court shall request a petition proposing a suitable guardian and set a hearing date to be held in less than 30 days. The guardian ad litem shall investigate the suitability of the new proposed guardian. *54.44 (5)*

RA *AM* (4) In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family conflict with the best interests of the ward. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual *54.15 (6)*

as the individual's guardian of the person. If the proposed incompetent has executed a durable financial power of attorney under Ch. 243, the court shall give consideration to the appointment of the agent or the person nominated as guardian in the document, if different, for the individual as the individual's guardian of the estate.

in conflict with 54.15(1)

(5) No person, except a nonprofit corporation or other entity approved by the department of health and family services under s. _____, who has guardianship of the person of 5 [??] or more adult wards unrelated to the person may accept appointment as guardian of the person of another adult ward unrelated to the person, unless approved by the court. No such person may accept appointment as guardian of the person of more than 10 such wards unrelated to the person.

54.15 (8)

Section Two—Duties and Powers of the Guardian In General

(1) A guardian shall exercise only those powers that the guardian is authorized to exercise by court order. All other rights are reserved to the ward.

54.18(1)

(2) A guardian shall exercise the utmost care and diligence and good faith when acting on behalf of the ward.

54.18 (2) (a), (b), (c)

(3) A guardian shall act in all proceedings as an advocate of the ward, and if the ward is protectively placed, advocate for the ward's rights including but not limited to those set forth in secs. 50.09 and 51.61, Stats.

(4) A guardian shall exhibit the utmost degree of trust, loyalty and fidelity in relation to the ward.

Section Three—Duties and Powers of the Guardian of the Estate

(1) DUTIES OF THE GUARDIAN OF THE ESTATE. The guardian of the estate shall afford the ward the greatest amount of independence and self-determination with respect to property management in light of that person's functional level, understanding and appreciation of his or her functional limitations, and personal wishes, preferences and desires with regard to managing the activities of daily living. To this end, to the extent provided in the Determination and Order Appointing Guardian, the guardian of the estate shall:

54.19 (intro.)

(a). Take possession of all or a specified portion of the ward's real and personal property, and of rents, income, issues and benefits therefrom, whether accruing before or after the guardian's appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof and prepare an inventory of same. Subject to such possession the title of all such estate and to the increment and proceeds thereof shall be in the ward and not in the guardian.

54.19 (1)

CR AM (880.19(1)) (b). Retain, expend or distribute, sell and invest such property, as hereinafter provided, and account for it faithfully. 54.19 (2)

CR (c). Determine whether the ward has executed a will, determine the location of any will, and the appropriate persons to be notified in the event of the death of the ward and, in the event of the death of the ward, notify those persons. 54.19 (3)

CR (d). Use the property and financial resources and income available therefrom to maintain and support the ward, and to maintain and support those persons legally dependent upon the ward; and to pay for the post secondary education expenses of the children of the ward. 54.19 (4)

CR (e). Prepare and file an annual account as provided in sec. ____ 54.19 (5)

CR AM (880.19(1)) (f). At the termination of the appointment, deliver such property to the person legally entitled to it. *Last sentence* 54.19 (6)

CR (g) Claims 54.19 (7) (intro.)

RA AM (880.22(1)) (1) Payment. Every guardian of the estate shall pay the just debts of the ward out of the ward's personal estate and the income of the ward's real estate, if sufficient, and if not, then out of the ward's real estate upon selling the same as provided by law. 54.19 (7)(a)

RA CL (880.22(2)) (2) Proceedings to Adjust Claims. The guardian or a creditor of any ward may apply to the court for adjustment of claims against the ward incurred prior to entry of the order appointing the guardian or the filing of a lis pendens as provided in s. ____ of the order appointing the guardian or the filing of a lis pendens as provided in s. ____ The court shall by order fix the time and place it will adjust claims and the time within which all claims must be presented or be barred. Notice of the time and place so fixed and limited shall be given by publication as in estates of decedents; and all statutes relating to claims against and in favor of estates of decedents shall apply. As in the settlement of estates of deceased persons, after the court has made the order no action or proceeding may be commenced or maintained in any court against the ward upon any claim of which the circuit court has jurisdiction. 54.19 (7)(b)

CL (880.23) (h) Actions. The guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due him or her, or may, with the approval of the circuit court, compound and discharge the same, and shall appear for and represent his or her ward in all actions and proceedings except where another person is appointed for that purpose. 54.19 (8) and 54.20 (2)(j)

CR (i). File with the recording officer of the county wherein the ward is possessed of real property, an acknowledged statement to be recorded and indexed under the name of the ward identifying the real property possessed by the ward, and the tax map numbers of the property, and stating the date of adjudication of incompetency of the ward regarding property management, and the name, address, and telephone number of the guardian and the guardian's surety. 54.19(9)

CL (i). Perform all other duties required by law.
(880.19(1)) Part of last sentence. 54.19 (10)

CR (2) POWERS OF THE GUARDIAN OF THE ESTATE. Consistent with the functional limitations of the ward, the ward's understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to manage property and financial affairs, and the ward's personal wishes, preferences and desires with regard to managing the activities of daily living, and the least restrictive form of intervention, the court may authorize the guardian to exercise those powers necessary and sufficient to manage the property and financial affairs of the ward; to provide for the maintenance and support of the ward, and those persons depending upon the ward; to transfer a part of the ward's assets to or for the benefit of another person on the ground that the ward would have made the transfer if he or she had the capacity to act. Transfers made pursuant to this section may be in any form that the ward could have employed if he or she had the requisite capacity, except in the form of a will or codicil. Except as to the powers enumerated in subs. _____ below, all such powers may be exercised by the guardian without approval of the court. In exercising its powers hereunder, the guardian of the estate shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. after 54.20 (1) ↓ X did not draft

RA AM (880.19(2)) (880.19(2)) CR (a) Those powers which may be exercised by the guardian only with prior written court approval are: 54.20 (2) (intro.) 54.20(2)(a)

CR (1) Make gifts

RA AM (880.175) (2) Transfer assets of the ward to the trustee or trustees of an existing revocable living trust created by the ward for the benefit of himself or herself and those dependent upon the ward for support, or to the trustee or trustees of a trust created for the exclusive benefit of the ward, if a minor, which distributes to him or her at age 18 or 21, or to his or her estate, or as he or she appoints if he or she dies prior to age 18 or 21. 54.20 (2) (b)

CR (3) Establish a trust under 42 USC 1396p(d)(4) (OBRA '93 Supplemental Needs Trusts) and transfer assets into the trust. 54.20 (2)(c)

CR (4) Purchase an annuity and/or insurance contract and exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value. 54.20 (2)(d)

CR (5) Exercise any elective rights accruing to the ward by reason of the death of the ward's spouse or parents. 54.20 (2)(e)

CR (6) Release or disclaim any interest by testate or intestate succession, by non testamentary transfer at death or by inter vivos transfer as provided in Secs. ____, Wis. Stats. 54.20 (2)(f)

AM (7) Enter into marital property agreement with the ward's spouse pursuant to Sec. 766.58, Stats. 54.20 (2)(g)

RA (880.173) CR (8) Provide support for persons whom the ward is not legally obligated to support. 54.20 (2)(h)

CR (9) Convey or release contingent and expectant interest in property, including marital property rights and any right of survivorship incidental to joint tenancy or survivorship marital property. 54.20 (2)(i)

(b) The following powers may be exercised by the guardian without court approval: 54.20 (3) (intro.)

CR AM (1) Provide support for persons the ward is legally obligated to support. 54.20 (3) (a)

CR (2) Enter into contracts except those requiring court approval under sub (a) or otherwise prohibited by this Chapter. 54.20 (3) (b)

CR (3) Exercise options of the ward to purchase securities or other property. 54.20 (3) (c)

CR (4) Authorize access to or release of confidential records. 54.20 (3)(d)

CR (5) Apply for government and private benefits. 54.20 (3)(e)

CR (6) Take such other actions as may be reasonable or appropriate to carry out the duties of the guardian of the estate except for those actions specified in sub a.. X redundant to 54.19

CR (c) If the petitioner or the guardian seeks the authority to exercise a power which involves the transfer of a part of the ward's assets to or for the benefit of another person, including the petitioner or guardian, the petitions shall include the following information: 54.21 (2) (intro.)

CR (1) Whether any prior proceeding has at any time been commenced by any person seeking such power with respect to the property of the ward and, if so, a description of the nature of such application and the disposition made of such application. 54.21 (2)(a)

CR (2) The amount and nature of the financial obligations of the ward including funds presently and prospectively required to provide for the ward's own maintenance, support, and well-being and to provide for other persons dependent upon the ward for support, whether or not the ward is legally obligated to provide that support. A copy of any court order or written agreement setting forth support obligations of the ward shall be attached to the petition if available to the petitioner or guardian. 54.21 (2)(b)

CR (3) The property of the ward that is the subject of the present application. 54.21 (2)(c)

CR (4) The proposed disposition of such property and the reasons why such disposition should be made.

CR (5) The wishes of the ward if those can be ascertained. 54.21(2)(d)

CR (6) Whether the ward has previously executed a will or similar instrument (including but not limited to any durable powers of attorney) and if so, the terms of the most recently executed will or similar instrument together with a statement as to how the terms of the will or similar instrument became known to the petitioner or guardian. For purposes of this section, the phrase "will or similar instrument" shall include a revocable or irrevocable trust or durable power of attorney. 54.21(2)(e)
54.21 (1)

CR 1. If the petitioner or guardian can, with reasonable diligence, obtain a copy of the most recently executed will or similar instrument, the petitioner or guardian shall deliver it to the Court, with appropriate safeguards for confidentiality. In such case, the petition shall contain a statement as to how the copy was secured and the basis for the petitioner or guardian's belief that such copy is a copy of the ward's most recently executed will or similar instrument. 54.21(3)(a)(intro), 1, 2, 3.

CR 2. If the petitioner or guardian is unable to obtain a copy of the most recently executed will or similar instrument, or if the petitioner or guardian is unable to determine whether the ward has previously executed a will or similar instrument, what efforts were made by the petitioner or guardian to ascertain such information. 54.21(3)(b)

CR 3. If a copy of the most recently executed will or similar instrument is not 54.21 (3)(c)

otherwise available, the court may direct an attorney or other person who has the original will or similar instrument in his or her possession to turn a photocopy over to the court for its examination, in camera. A photocopy of the will or similar instruments may, in the discretion of the court, be turned over by the court to the parties in such proceeding unless the court finds that to do so would be contrary to the best interests of the ward.

CR (7) A description of any significant gifts or patterns of gifts made by the ward. 54.21(2)(f)

CR (8) The names, post-office addresses and relationships of the presumptive adult heirs of the ward and of the named or described beneficiaries under the most recent will or similar instrument executed by the ward. 54.21(2)(g)(intro.), 1. and 2.

CR (9) Notice of a petition seeking relief under this section shall be served upon: 54.21(4)(intro.)

CR 1. The persons entitled to notice under sub. ____ 54.21(4)(a)

CR 2. If known to the petitioner or guardian, the persons described in sub (8) unless the court dispenses with such notice. 54.21(4)(b)

CR 3. The County Corporation Counsel in the discretion of the court. 54.21(4)(c)

CR (10) In determining whether to approve the application, the court shall consider: 54.21(5)(intro.)

CR 1. The wishes of the ward, if known. 54.21(5)(a)

CR 2. Whether the disability of the ward is likely to be of sufficiently short duration such that he or she should make the determination with respect to the proposed disposition when no longer disabled. 54.21(5)(b)

CR 3. Whether the needs of the ward and his or her spouse or other legally dependent persons depending upon the ward for support can be met from the remainder of the assets of the ward after the transfer is made without causing the ward to need public assistance; provided however that nothing herein shall prohibit gifts by a ward that would be permitted under Sec.[MA exempt gift statute]. 54.21(5)(c)

CR 4. Whether the donees or beneficiaries of the proposed disposition are the natural objects of the bounty of the ward and whether the proposed disposition is consistent with any ascertained wishes of the ward or known testamentary or other estate plan or pattern of lifetime gifts he or she has made. 54.21(5)(d)

CR 5. Whether the proposed disposition will produce estate, gift, income or other tax savings which will significantly benefit the ward or his or her dependents or other persons for whom the ward would be concerned. 54.21(5)(e)

CR 6. Such other factors as the court deems relevant. 54.21(5)(f)

CR (11) The court may grant the application if satisfied of the following and shall make a record of these findings: 54.21(6) (intro.)

CR 1. The ward lacks the requisite mental capacity to perform the act or acts for which approval has been sought and is not likely to regain such capacity within a reasonable period of time. 54.21(6) (a)

CR 2. A competent individual in the position of the ward would be likely to perform the act or acts under the same circumstances. 54.21(6)(b)

CR 3. The ward has not manifested an intention inconsistent with the performance of the act or acts for which approval has been sought at some earlier time when he or she had the requisite capacity or, if such intention was manifested, the particular person would be likely to have changed such intention under the circumstances existing at the time of the filing of the petition. 54.21(6) (c)(intro.) 1. and 2.

CR (12) Nothing in this section imposes any duty on the guardian to commence a special proceeding pursuant to this section seeking to transfer a part of the assets of the ward to or for the benefit of another person and the guardian shall not be liable or accountable to any person for having failed to commence a special proceeding pursuant to this article seeking to transfer a part of the assets of the ward to or for the benefit of another person. 54.21(7)

RA ~~AM~~ (c) Retention of Assets. The guardian of the estate may, without the approval of the court, retain any real or personal property possessed by the ward at the time of appointment of the guardian or subsequently acquired by the ward by gift or inheritance without regard to ch. 881. *First part of 881* 54.20 (3)(g)

RA ~~CL~~ (d) Continuation of Business. In all cases where the court deems it advantageous to continue the business of a ward, such business may be continued by the guardian of the estate on such terms and conditions as may be specified in the order of the court. 54.20 (2)(k)

(e) Investments.

RA ~~CL~~ (1) The guardian of the estate may, without approval of the court, invest and (880.19(4)(a)) 54.20 (3)(h)

This section is split up but words remain the same. This might be AM)

reinvest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in accordance with ch. 881.

RA ~~EL~~ (2) The guardian of the estate may, with the approval of the court, after such notice as the court directs, invest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in such real or personal property as the court determines to be in the best interests of the guardianship estate, without regard to ch. 881. *Subject to ch. 786* 54.20 (2)(L)

RA ~~AM~~ (f) Loans to Guardian. No guardian shall lend guardianship funds to himself or herself. *The only change from EL is addition of a heading.* 54.18 (3)(a)

(g) Sales and Other Dispositions.

RA ~~EL~~ (1) The guardian of the estate may, without approval of the court, sell any property of the guardianship estate acquired by the guardian pursuant to sub. (e) *Subject to ch. 786* 54.20 (3)(i)

RA ~~EL~~ (2) The court, on the application of the guardian of the estate or of any other person interested in the estate of any ward, after such notice if any, as the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease or exchange any property of the guardianship estate upon such terms as the court may order, for the purpose of paying the ward's debts, providing for the ward's care, maintenance and education and the care, maintenance and education of the ward's dependents, investing the proceeds or for any other purpose which is in the best interest of the ward. 54.22

RA ~~AM~~ (3) No guardian shall purchase property of the ward, except at fair market value and with the approval of the court. 54.18 (3)(b)

RP ~~EL~~ (4) The provisions of this subsection insofar as they apply to real estate shall be subject to ch. 786. *Included in 54.20(3)(i), 54.22, 54.18(3)(b)*

RA ~~EL~~ (h) Trust Companies, Exemption from Investment Restraints. The limitations of this section relating to retention, sale, investment or reinvestment of any asset shall not be applicable to any bank or trust company authorized to exercise trust powers. 54.23 (880.19(6))

RA ~~AM~~ (3) Exemption from civil liability. Any guardian of the person or of the estate is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or she performs the duties in good faith, in the best interests of the ward and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs. 54.18 (4)

Section 4—Duties and Powers of the Guardian of the Person**(1) DUTIES OF THE GUARDIAN OF THE PERSON.** — RA 54.25 (title)880.38 (title)
AM (880.38(3))

(a) A guardian shall make an annual report on the condition of the ward to the court that ordered the guardianship and to the county department designated under s. 55.02. That county department shall develop reporting requirements for the guardian of the person. The report shall include, but not be limited to, the location of the ward, the health condition of the ward, any recommendations regarding the ward and a statement of whether or not the ward is living in the least restrictive environment consistent with the needs of the ward.

54.25
(1)(a)RA
AM (880.38(2))

(b) A guardian of the person shall secure necessary care or services for the ward, in the ward's best interests, based on the following:

54.25(1)(b)
(intro.)

CR 1. Regular physical inspection of the ward's condition, surroundings and treatment;

54.25(1)(b)1.

CR 2. Examination of medical and treatment records;

54.25(1)(b)2.

CR 3. Attendance at and participation in staffings where treatment and care are discussed; and

54.25(1)(b)3.

CR 4. Inquiry into risks, benefits and alternatives, particularly where drastic or restrictive treatments are proposed;

54.25(1)(b)4.

CR (c) A guardian of the person may bind the ward or the ward's property, to carry out the powers and duties set forth in subs. (1) and (2) of this section.

X
did not
draft - see
**** NOTE

CR (2) POWERS OF GUARDIAN OF THE PERSON. Consistent with the functional limitations of the ward, the ward's understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to provide for personal needs, and the ward's personal wishes, preferences and desires with regard to managing the activities of daily living as defined in sub. _____, and the least restrictive form of intervention, and subject to the limitations contained in the Determination and Order Appointing Guardian, the court may grant to the guardian powers necessary and sufficient to provide for the personal needs of the ward. Those powers which may be granted include, but are not limited to, the power to:

54.25
(2)(intro.)X
did not
draft some
material -
see ****
NOTE

CR (a) Make decisions about who shall provide personal care or assistance.

54.25(2)(a)

CR (b) Make decisions regarding social environment and other social aspects of the life of

54.25(2)(b)

the ward including but not limited to decisions regarding marriage.

CR (c) Make decisions regarding the ward's travel restrictions. 54.25(2)(c)

CR (d) Make decisions relating to the ward's right to obtain or retain licenses for which the ward is deemed qualified. 54.25(2)(d)

CR (e) Authorize access to or release of confidential records. 54.25(2)(e)

CR (f) Make decisions regarding education. 54.25(2)(f)

CR (g) Apply for government and private benefits if no guardian of the estate has been appointed and there is no other person legally authorized to apply for such benefits. 54.25(2)(g)

(h) [Decisions on consenting to or refusing medical treatment including tube feeding. Address issues raised by L.W. and Edna M.F. Have Betsy Abramson try her hand at drafting this section--Betsy has political concerns regarding trying to address this issue legislatively] 54.25(2)(h)

CR (i) Choose the ward's place of residence. In making this decision, the guardian may consider the existence of and availability of family, friends and social services in the community; the care, comfort and maintenance, and where appropriate, rehabilitation of the ward; and the needs of those with whom the ward resides. A guardian may admit a ward to skilled nursing facilities and certain community based residential facilities as provided by Secs. _____ 54.25(2)(i)

Subchapter 4--Procedures

Section One--Jurisdiction and Venue

RA AM (1) JURISDICTION. The circuit court shall have jurisdiction over all petitions for guardianship 880.02 and protective placement. A guardianship of the estate of any person, once granted, shall extend to all of his or her estate in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786. 54.30(1)

RA AM (2) VENUE. All petitions for guardianship and protective placement of residents of the state shall be directed to the circuit court of the county of residence of the person subject to guardianship or protective placement or of the county in which the person is physically present. A petition for guardianship of the person or estate of a nonresident may be directed to the circuit court of any county where the person or any property of the nonresident may be found. 54.30(2)

R.N. 880.06 (title) (3) CHANGE OF VENUE. 54.30(3) (title)

RA **EL** (880.06 (1)) (a) ORIGINAL PROCEEDING. The court wherein a petition is first filed shall determine venue. If it is determined that venue lies in another county, the court shall order the entire record certified to the proper court. A court wherein a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court, summarily dismiss such petition.

54.30
(31)(a)

RA **AM** (880.042) *This title should be "Change of Residence of Ward"* (b) CHANGE OF RESIDENCE OF WARD OR GUARDIAN. If a ward removes from the county in which he or she has resided to another county within the state, venue may be transferred to the new county of residence as follows:

54.30
(3)(b)
(intro.)

CR

1. A Petition for Change of Venue shall be filed in the County in which venue for the guardianship originally lie.

54.30
(3)(b)1.

CR

2. Notice shall be given to the Corporation Counsels of the County of original venue and the proposed new venue and to the Register in Probate for the County of the proposed new venue.

54.30
(3)(b)2.

CR

3. If there is no objection within fifteen (15) days from the date notice is given, then an Order changing venue may be entered. If there is objection to the change of venue, then a hearing shall be set within seven (7) days and notice of such hearing shall be given to the Corporation Counsels of the two counties and to the Register in Probate for the proposed new venue.

54.30(3)
(b)3.

RA **AM** (880.07) **Section Two—Liability for Fees.** If the proposed ward is indigent, the county having venue of the guardianship proceeding shall be the county liable for any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for any legal fees due the proposed ward's legal counsel. [It shall be presumed that if a guardianship is imposed, the ward's estate or income pays for the GAL, initial medical examination, petitioner's attorney fees, advocate counsel and ward's transportation if funds are available, unless otherwise ordered by the court. [Incorporate section position on petitioner's counsel attorneys fees] See Insert *I don't know what this is. Ann F.*

54.32

RA **Section Three—Petition for Guardianship.**

54.34 (title)

RA **EL** (880.07(1)) (1) Any relative, public official or other person, may petition for the appointment of a guardian of a person subject to guardianship. Such petition shall state, so far as may be known:

54.34
(1)(intro)

RN

EL (880.07(1)(a)) (a) The name, date of birth, residence and post-office address of the proposed ward.

54.34(1)(a)

RA

AM (880.07(1)(b)) (b) The nature of the proposed ward's incapacity with specification of the incompetency.

54.34(1)(b)

RN

EL (c) The approximate value of the proposed ward's property and a general description of its nature.

54.34(1)
(c)

- RA ~~CL~~ (d) Any assets previously derived from or benefits now due and payable from the U.S. department of veterans affairs. 54.34 (1)(d)
- RN ~~CL~~ (e) Any other claim, income, compensation, pension, insurance or allowance to which the proposed ward may be entitled. 54.34 (1)(e)
- RN ~~CL~~ (f) Whether the proposed ward has any guardian presently. 54.34 (1)(f)
- RN ~~CL~~ (g) The name and post-office address of any person nominated as guardian by the petitioner. 54.34 (1)(g)
- RA ~~CR~~ (h) The names and post-office addresses of all interested parties as defined in sec. _____. 54.34 (1)(h)
- RA ~~CL~~ (i) The name and post-office address of the person or institution having the care and custody of the proposed ward. 54.34 (1)(i)
- RA ~~AM~~ (j) The interest of the petitioner, and if a public official or creditor is the petitioner, then the fact of indebtedness as well as the authority of the petitioner to act. 54.34 (1)(j)
(880.07(1)(j))
- CR (k) Whether the proposed ward is receiving public benefits, including but not limited to medical assistance and community options program or similar benefits. 54.34 (1)(k)
- CR (l) Whether there is already an existing power of attorney for health care or financial power of attorney and if so, the identity of the appointed agents. 54.34 (1)(l)
- CR (m) Whether a full or limited guardianship is requested. 54.34 (1)(m)
- CR (n) Whether the proposed ward has children who are not children of the current marriage. 54.34 (1)(n)
- RA ~~CL~~ (o) A petition for guardianship may also include an application for protective placement or protective services or both under ch. 55. (880.07(2)) 54.34 (2)
- RA ~~CL~~ (2) If a petition for guardianship of the estate is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of filing of the inventory or other documents setting forth the value of the estate. (880.07(4)) 54.34 (3)

Section Five--Examination of Proposed Ward. Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the functional incapacity of the proposed ward as defined in Sec. _____, based upon such physician or psychologist's personal examination. The privilege under s. 905.04 shall not apply to this statement. A copy of the statement shall be provided to the proposed ward or his or her advocacy counsel, guardian ad litem and attorney for

RA ~~BE~~ (880.33(1))

petitioner. Prior to such examination a person alleged to be incompetent shall be informed that his or her statements may be used as a basis for a finding of incompetency and an order for protective services or protective placement. The person shall also be informed that he or she has a right to refuse to participate in the examination or speak to the examiner and that the examiner is required to report to the court even if the person does not speak to the examiner. The issuance of such a warning to the person prior to each examination establishes a presumption that the person understands that he or she need not speak to the examiner. Nothing herein shall prohibit use of a physician or psychologist's report based on an examination of the proposed ward by the physician or psychologist prior to filing the petition for guardianship.

CR Section Six-Notice

CR (1) Form and Delivery of Notice. Except as otherwise provided herein, Notices shall be in writing and may be delivered personally, by certified mail, return receipt requested or by facsimile transmission. Notice shall be deemed given either by proof of personal delivery or by proof that the notice was mailed to the last known address of the recipient or sent by facsimile transmission to the last known facsimile telephone number of the recipient.

RA AM (2) Notice of hearing for appointments and rehearings. Upon the filing of a petition for guardianship of the person or of the estate, and the court being satisfied as to compliance with s. 880.07, the court shall order notice of the time and place of hearing as follows:

CR (a) A petition for guardianship of the person or of the estate shall be heard within 60 days after it is filed.

RA (b) A petitioner shall have notice served of a petition for appointment of a guardian upon the proposed incompetent and existing guardian, if any, by personal service at least 10 days before the time set for hearing. (880.08(1))

CR (c) If such proposed incompetent is in custody or confinement, a petitioner shall have notice served by registered or certified mail or facsimile transmission (followed by registered or certified mail) on the proposed incompetent's custodian, who shall immediately serve it on the proposed incompetent. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that the custodian (i) served and informed the proposed incompetent and (ii) returned the certificate and notice to the circuit judge. (880.08(1))

RA (d) The notice shall include the names of all persons who are petitioning for guardianship. A copy of the petition shall be attached to the notice. (880.08(1))

CR (e) Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompetent's counsel, if any, guardian ad litem, presumptive

adult heirs, other interested persons agent under a financial or health care power of attorney, or other persons who have legal or physical custody of the proposed incompetent, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the court may require. Notice need only be give to those persons whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained.

RP (new file created) = 54.38(3)(title)

RA AM (3) MINORS. When the proposed ward is a minor, notice shall be given as provided in s. 879.05 to the following persons:

RA (a) To the proposed ward's spouse;

RA (b) To parents except those whose rights have been judicially terminated;

RA (c) To a minor over 14 years of age unless the minor appears at the hearing;

RA (d) To any other person, agency, institution, welfare department or other entity having the legal or actual custody of the minor.

RA AM (4) REHEARINGS. Notice of a rehearing to determine if a ward is a proper subject to continue under guardianship shall be given as required for the appointment of a guardian unless otherwise directed by the court.

RA CL (5) NOTICE OF APPOINTMENT. If for any reason the court fails to appoint as guardian the nominee of the minor, the guardian who qualifies shall give notice of the guardian's appointment to the minor by certified mail addressed to the minor's last-known post-office address and an affidavit of such mailing shall be filed with the court within 10 days after the issuance of letters.

Section Seven—Guardian Ad Litem Appointment and Duties

(880.331) RP (created as 54.40(title))

RA CL (1) APPOINTMENT. The court shall appoint a guardian ad litem whenever it is proposed that the court appoint a guardian on the ground of incompetency under Sec. ____, protectively place a person or order protective services under s. 55.06, review any protective placement or protective service order under s. 55.06 or terminate a protective placement under s. 55.06.

RA CL (2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

RA **CL** (3) **RESPONSIBILITIES.** The guardian ad litem shall be an advocate for the best interests of the proposed ward or alleged incompetent as to guardianship, protective placement and protective services. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the proposed ward or alleged incompetent or the positions of others as to the best interests of the proposed ward or alleged incompetent. The guardian ad litem has none of the rights or duties of a general guardian. 54.40 (3)

RN **AM** (4) **GENERAL DUTIES.** The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1). The guardian ad litem shall do all of the following: 54.40 (2) 54.40 (4) (intro.)

RA **AM** (a) Interview the proposed ward or alleged incompetent and explain the contents of the petition, the applicable hearing procedure, the right to counsel and the right to request or continue a limited guardianship. 54.40 (4) (a)

CR (b) Interview the proposed guardian and any other person seeking appointment as guardian. 54.40 (4) (b)

RA **AM** (c) Advise the proposed ward or alleged incompetent, both orally and in writing, of the ward's rights to a jury trial, to an appeal, to counsel and to an independent medical or psychological examination on the issue of competency, at county expense if the person is indigent. 54.40 (4) (c)

RA **CL** (d) Request that the court order additional medical, psychological or other evaluation, if necessary. 54.40 (4) (d)

RA **CL** (e) If applicable, inform the court that the proposed ward or alleged incompetent objects to a finding of incompetency, the present or proposed placement or the recommendation of the guardian ad litem as to the proposed ward's or alleged incompetent's best interests or that the proposed ward's or alleged incompetent's position on these matters is ambiguous. 54.40 (4) (e)

CR (f) Inform the court and the petitioner (or petitioner's counsel where the petitioner is represented) if the proposed ward requests representation by counsel. 54.40 (4) (f)

CR (g) Attend all court proceedings related to the guardianship. 54.40 (4) (g)

RA **CL** (h) Present evidence concerning the best interests of the proposed ward or alleged incompetent, if necessary. 54.40 (4) (h)

RA **CL** (i) Report to the court on any other relevant matter that the court requests. 54.40 (4) (i)

RA ~~CL~~ (6) COMMUNICATION TO A JURY. In jury trials under ch. 55 or 880, the court or guardian ad litem may tell the jury that the guardian ad litem represents the interests of the proposed ward or alleged incompetent. 54.40 (5)

RA ~~CL~~ (7) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates, even if counsel has been appointed for the proposed ward or alleged incompetent. The court may extend that appointment, or reappoint a guardian ad litem whose appointment under this section has terminated, by an order specifying the scope of responsibilities of the guardian ad litem. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request that the court terminate any extension or reappointment. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal. 54.40 (6)

CR Section Eight--Hearing

CR (1) STANDARD OF PROOF. Any determination by the court as to whether or not the proposed ward is incompetent shall be by clear and convincing evidence. 54.44 (title) (2)

CR (2) PRESENCE OF GUARDIAN. The guardian must be physically present at the hearing, unless such attendance is excused by the court. The court may, for good cause shown, permit attendance by telephone. 54.44 (3)

CR Several amendments AM (880.08(1)) (3) PRESENCE OF WARD. The petitioner shall ensure that the proposed ward attends the hearing unless such attendance is waived by the GAL. In making this determination the GAL shall consider the effect of the proposed ward's attendance on the ward's physical or psychological health in relation to the importance of the proceeding and the ward's expressed wishes. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, advocate counsel or other interested person. If the ward is a resident of a nursing home or other facility and is unable to personally attend the hearing, the court shall hold the hearing at such nursing home or other facility if requested by the proposed ward, the proposed ward's counsel or the guardian ad litem. 54.44 (4)

RA (4) PRIVACY OF HEARING. Every hearing on a petition for guardianship shall be closed, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be open. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses, may be present. 54.44 (5)

RC (880.33(2)(2))

CR (S) TIME OF HEARING AND PROVISION OF REPORTS. A petition for guardianship shall be heard within 60 days after it is filed. The guardian ad litem and attorney for the proposed ward shall be provided with a copy of the report of the examining physician or psychologist at least 96 hours in advance of the hearing. *AM (880.33(2)) Dept to last meeting.*

54.44
(1)

CR Section Nine--Disposition of Petition. Following the hearing as provided in sec. ____ above, the Court shall dispose of the case as follows:

54.46
(title),
(intro.)

CR (1) DISMISSAL OF THE PETITION. If the person alleged to be incompetent under this Chapter is found not to be incompetent, the court shall dismiss the petition. The court may also consider an application by the alleged incompetent for the appointment of a conservator pursuant to Sec. ____.

54.46
(1)

CR (2) PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS. If a person is a minor or is found to be incompetent (a ward), the court without appointing a guardian may authorize, direct, or ratify any transaction or series of transactions necessary to achieve any security, service or care arrangement meeting the foreseeable needs of the ward, or may authorize, direct or ratify any contract, trust, or other transaction relating to the ward's property and financial affairs if the court determines that the transaction is necessary as a means of providing for personal needs and/or property management for the alleged ward. Before approving a protective arrangement or other transaction under this subdivision, the court shall consider the interests of dependents and creditors of the ward, and in view of the person's functional level, whether a guardianship is necessary. The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or other transaction authorized under this subdivision. The special guardian shall have the authority conferred by the order of appointment, shall report to the court on all matters done pursuant to the order of the appointment and shall serve until discharged by order of the court. The court may approve a reasonable compensation for the special guardian; however, if the court finds that the special guardian has failed to discharge his or her duties satisfactorily in any respect, the court may deny or reduce the amount of compensation or remove the special guardian.

APPOINTMENT OF
(a) SPECIAL
GUARDIAN54.46
(2)
(a) and
(b)

CR RE (3) APPOINTMENT OF GUARDIAN. If the proposed ward is found to be incompetent, the Court may enter a Determination and Order Appointing guardian, specifying the powers to be granted to the guardian as provided in Sec. ____.

54.46
(3)

CR (a) Co-Guardians. Co-guardians of the person and/or estate may be appointed in the court's discretion subject to such conditions as the court may impose. It is presumed that any guardian's or co-guardian's individual decisions will be binding unless otherwise ordered by the court.

54.46
(3)(a)

RA RE (b) Powers of Attorney for Health Care. If the incompetent has executed a power of

54.46
(3)(b)

(880.33(8)(b))

attorney for health care under ch. 155, the power of attorney for health care shall remain in effect unless otherwise ordered by the court. The court shall have the discretion to revoke the power of attorney for health care or limit the authority of the health care agent.

CR (c) Financial Power of Attorney. If the proposed ward has executed a financial durable power of attorney, the financial durable power of attorney shall remain in effect unless otherwise ordered by the court. The court shall have the discretion to revoke the financial durable power of attorney or limit the authority of the agent under such power of attorney. 54.46 (3)(c)

CR (d) Power of Guardian to Revoke Powers of Attorney. The guardian of the person or estate may only revoke a financial durable power of attorney or power of attorney for health care with the authorization of the court. 54.25 (2)(j)

CR (e) In exercising its discretion under (b) and (c), the court shall presume that the power of attorney for health care and the financial durable power of attorney shall remain in effect unless good cause is shown.

CR 54.46 (3) (d) (from part of s. 880.13 (3))

RN RC (f) Fees and Costs of Petitioner. When a guardian is appointed, the court shall award reasonable costs and attorney fees to the petitioner from the ward's estate and income unless it finds that it would be inequitable to so award costs and fees after considering: the petitioner's interest in the matter, including any conflict of interest on the part of the petitioner in pursuing the guardianship; whether the ward had executed a power of attorney or engaged in other advance planning to avoid guardianship; the ability of the ward's estate and income to pay; whether the guardianship was contested and, if so, the nature of the contest; and other factors the court deems relevant. 54.46 (4)

(4) BOND. / RP

RC (880.125 and 880.13 (1))

(a) Amount and Sufficiency of Bond. The order shall specify the amount of the bond, if any, to be given by the guardian of the estate conditioned upon the faithful performance of the duties of the guardian of the estate. No bond shall be required for the guardian of the person. 54.46 (5)(a)

AM (880.13 (2)(a) & (b))

(b) Waiver of Bond. Unless required under s. _____, the court may waive the requirement of a bond at any time in its discretion or if so requested in a will wherein a nomination appears. Whenever a guardian has or will have possession of funds with a total value of \$100,000 or less, the court may direct deposit of the funds in an insured account of a bank, credit union, savings bank or savings and loan association in the name of the guardian and the ward and payable only upon further order of the court. In such event the court may waive the requirement of a bond. 54.46 (5)(b) (intro.) 54.46 (5)(b) 3.

RA & CR (c) Blanket Bond for Employee Guardian or Conservator. The circuit court may (880.13 (3)) 54.46 (5)(c) (and 54.46 (3)(d))

designate one or more persons who are county institutional employees, whose duty it is to act as guardian of one or more estates of incompetent persons upon appointment by the court, or as conservator for the estates of persons making application therefor, who are residents of the county home, patients of the county hospitals or county mental hospitals. The appointments shall be made subject to this chapter. The person, before entering upon duties, shall take an official oath. The court may waive the requirement of a bond or may require the person to give bond, with sufficient sureties, to the judge of the court, in a sum not less than \$1,000 subject to court approval. The bond shall cover the person so designated and appointed in all guardianships and conservatorships to which the person has been or shall be appointed by the court. Additional bonds may be required from time to time. The expense of surety upon the bonds shall be paid by the county treasurer on the order of the circuit judge. The term of the person appointed shall terminate upon resignation or removal and approval of the person's accounts by the court.

RA **CL** (5) LETTERS OF GUARDIANSHIP. When a guardian has given bond as required and the bond has been approved by the judge, letters under the seal of the court shall be issued to the guardian. (1980.14) 54.46 (6)

First part
Section Ten—Rights of Proposed Ward RA

RA **RE** (880.33(2)(a)) 1. *and 880.33(2)(a) 2. ~~1st sentence~~*
(1) RIGHT TO COUNSEL. The proposed ward has the right to counsel if, at least 72 hours before the hearing, the alleged incompetent requests counsel; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. Such advocate counsel shall be a zealous advocate for the ward's expressed wishes and shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. If the person requests but is unable to afford advocate counsel, the court shall appoint advocate counsel. 54.42 (a) (intro.) and 1, 2, and 3.

RE (880.33(2)(a)) 1. *last part*

CR (2) RIGHT TO JURY TRIAL. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, his or her attorney or the guardian ad litem. A jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under s. 756.096 (3) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court. 54.42 (2)

RA **CL** (880.33(2)(b))
(3) RIGHT TO INDEPENDENT MEDICAL EXAMINATION. If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing. 54.42 (3)

RA (4) RIGHT TO PAYMENT OF EXPENSES TO CONTEST PROCEEDING. When a guardian *AM* (880.24(2)) 54.42 (4)

is appointed the court shall allow reasonable expenses incurred by the ward in contesting the appointment.

CL(880.33(7))

Section Eleven—Relation to Protective Placement. A finding of incompetency and appointment of a guardian under this subchapter is not grounds for involuntary protective placement. Such placement may be made only in accordance with s. 55.06.

54.48

Section Twelve—Procedures for Limited Term Guardianships

54.50 (title)

(1) EMERGENCY TEMPORARY GUARDIAN

54.50 (1)
(title)

(a) When Permitted. If it is demonstrated to the Court that a particular situation requires the appointment of a temporary guardian of the person or estate of an individual, then the Court may appoint a Temporary Guardian upon the following terms and conditions.

54.50 (1)(a)

(b) Duration and Extent of Authority. The Temporary Guardian may be appointed for a term not to exceed 60 days. This period may be extended by the court for good cause for one additional 60 day period. No further temporary guardianship may be imposed by the court on the ward under this provision for a period of three (3) months following the expiration of the preceding temporary guardianship. The authority of the Temporary Guardian shall be limited to those acts specified in the Determination and Order Appointing Temporary Guardian and which acts shall be limited to those that are reasonably related to the reasons specified in the Petition for Temporary guardianship. The Temporary Guardian shall not have the power to sell real estate or to expend an amount in excess of \$2,000 without prior court approval.

54.50 (1)(b)

(c) Procedure for Appointment. The following procedures shall be followed in appointing the Temporary Guardian:

54.50 (1)(c)
(intro.)

(1) A petition shall be filed containing the information specified in Sec. _____. In addition the Petition shall recite the reasons for the need to appoint a temporary guardian and the powers requested for the Temporary Guardian. The Petition shall also include a Petition for appointment of a permanent guardian of the person and/or estate or shall state why a permanent guardianship is not being sought.

54.50
(1)(c) 1.

(2) The petition and order for hearing shall be served on the proposed ward either before the hearing or as soon as practicable thereafter, but in no event not later than 3 calendar days after the hearing.

54.50
(1)(c) 2.

(3) A guardian ad litem shall be appointed in all cases. The guardian ad litem shall attempt to meet with the proposed ward prior to the hearing or as soon as

54.50
(1)(c) 3.

practicable thereafter, but not later than 7 calendar days after the hearing. The guardian ad litem shall report to the court on the advisability of the Temporary Guardianship at the hearing or not later than 10 calendar days after the hearing.

(4) The Court shall hold a hearing on the Temporary Guardianship no earlier than 48 hours from the filing of the Petition unless good cause is shown for an earlier hearing. At the hearing, the petitioner shall produce a report from a licensed physician or psychologist showing that there is a reasonable likelihood that the proposed ward will meet the definition of incompetence set forth in Sec. _____ above. The guardian ad litem shall attend the hearing in person or by telephone or may provide a written report.

(5) If the Temporary Guardian is appointed, the ward shall be given notice of the appointment not later than 3 calendar days after the hearing. If the ward, his/her counsel, the guardian ad litem or another interested party so request, the Court shall order a rehearing on the issue of appointment of the temporary guardian within 10 calendar days. If a rehearing is requested, the Temporary Guardian shall take no actions to spend the assets of the ward without the approval of the court.

(2) CERTAIN ADMISSIONS TO FACILITIES.

(a) In this section, "incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions, including decisions about his or her post-hospital care.

(b) An individual under sub. (c) may consent to admission to a facility, of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent under ch. 880, if all of the following apply:

(1) No person who is listed under sub. (c) in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

(2) 1. Except as provided in subd. 2., no person who is listed under sub. (c) and who resides with the incapacitated individual disagrees with the proposed admission.